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# *Music Copyright after Collectivisation*

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## **Introduction**

More than two decades ago, Helen Wallace highlighted the differences between book and music publishing. ‘Unlike book publishing’, she said, ‘the physical sale of the music itself is not the core business; the central asset is the copyright which, again unlike book publishing, rests with the publisher’.<sup>2</sup> Such a commercially significant difference left distinctive marks in music copyright throughout the twentieth century, and was particularly evident in the constitution of the Performing Right Society (PRS). As is well-documented

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<sup>2</sup> Helen Wallace, ‘What’s the Score’ *The Musical Times*, September 1994, 591.

in standard histories of copyright, the music publisher William Boosey (1864-1933) from Chappell & Co. was behind the move that established the collecting society. Although the history of the Society is often told as a success story, the first decades of the Society were highly controversial, full of conflicts and hesitations over its methods of operation and constitution. Even for closely-related music publishers, the Society was not the only (or the best) way to conduct business. For instance, his cousin's company, Boosey & Co., was initially reluctant to participate in the new society.<sup>3</sup> Likewise, Novello & Co. did not join until 1936, two decades after its birth.<sup>4</sup> This essay traces the initial struggles of the collective to explore how music copyright was constituted in the twentieth century and how it handled the transition from recognition to distribution, from rights to royalties in a context of rapidly changing technologies. In so doing, it follows initial controversies around the ways in which specific tariffs affected musical labour to argue that copyright and collective management were constitutive of distinctive business activities that triggered what came to be defined as the 'music industry'. More specifically, our suggestion is that music copyright in Britain was anchored in practices and strategies developed by this emerging collective subject built around copyright that, in turn, shaped the ways in which the industry imagined itself.

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<sup>3</sup> Helen Wallace, *Boosey & Hawkes. The Publishing Story* (London: Boosey & Hawkes, 2007) 6.

<sup>4</sup> 'The House of Novello and the Performing Right Society' *The Musical Times*, January 1936, 1; Gavin McFarlane, *Copyright: The Development and Exercise of the Performing Right* (City Arts, 1980) 145; John Drysdale, *Elgar's Earnings* (London: Boydell Press, 2013) 152-153.

## 1. Market and legal changes

### *Building alliances: Authors*

The passage of the 1911 Copyright Act is seen by music and legal historians as the cornerstone of the modern ‘music business’.<sup>5</sup> It involved a clear legislative recognition that composers were entitled to be paid for the performance of their works in public.<sup>6</sup> It also established a series of rights around the musical work: reproduction, mechanical and performing rights. This trilateral nature of music copyright, with a new (mechanical) right, saw the establishment of new bodies to collect fees derived from the exploitation of musical works.<sup>7</sup> The Mechanical Copyright Licences Company Ltd (MECOLICO) was formed in 1910 to collect mechanical fees,<sup>8</sup> subsequently merging in 1924 with the Copyright Protection Society (CPS) to form the Mechanical-Copyright Protection Society (MCPS). In the interim, the PRS had come into existence in 1914 to collect performing

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<sup>5</sup> Nigel Parker, *Music Business: Infrastructure, Practice and Law* (London: Sweet & Maxwell, 2004) 62-63.

<sup>6</sup> ‘Music and Money’, *Composer*, vol. 54, 1975, 35; ‘A New Discussion on Performing Rights’, *The Musical Times*, 1 November 1917, 520; PRS Archives, Boosey & Co, letter from Leslie Boosey to W.C. Harris, 6 November 1929 [works published after 1912 were not required by law to have a copyright notice and, consequently, it was assumed that the public performance of all works published after 1912 was protected by law].

<sup>7</sup> The performing right had already been recognised in the nineteenth century but arrangements to collect fees was left to the copyright owners; see Isabella Alexander, ‘Neither Bolt nor Chain, Iron Safe nor Private Watchman, Can Prevent the Theft of Words’: The Birth of the Performing Right in Britain’ in R. Deazley, M. Kretschmer and L. Bently (eds) *Privilege and Property: Essays on the History of Copyright* (Cambridge: OpenBook, 2010) 321-346.

<sup>8</sup> For an interesting account of the birth of MCPS, see ‘M.C.P.S’ *Billboard*, November 1976, 49-51; see also Terri Anderson, *Giving Music its Due* (London: MCPS-PRS, 2004) 23-24.

fees.<sup>9</sup> The variety of rights was a recipe for conflict and an opportunity to develop alliances between publishers, gramophone companies and composers.<sup>10</sup> For instance, the first years of the PRS were notoriously troubled precisely because of the legal puzzle created around the same intangible property.<sup>11</sup>

Unlike other music collecting societies in Europe, the PRS was initiated by publishers rather than composers.<sup>12</sup> This made it vulnerable to attacks from different quarters.<sup>13</sup> Although the PRS successfully built alliances and persuaded a substantial number of composers and publishers to come together and participate in a collective endeavour, it is intriguing to consider how it managed this. It not only persuaded composers to surrender their rights in order to participate in a society initiated by publishers, but also eventually convinced competing publishers to join. That some composers should be enthusiastic about the idea of a copyright society to collect performing rights was not such a surprise since they defined composers' participation in terms of necessity. In the summer of 1914, the *Observer* noted that a composer was 'naturally' going all the way with his publisher because 'otherwise he goes nowhere'.<sup>14</sup> Although the collective adventure was indeed initially embraced by some well-known English composers, such as Teresa del Riego

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<sup>9</sup> Terri Anderson, *Giving Music its Due* (London: MCPS-PRS, 2004) 24-26; 80-88; Cyril Ehrlich, *The Music Profession in Britain since the Eighteenth Century* (Oxford: Clarendon Press, 1985) 102.

<sup>10</sup> Gavin MacFarlane, *A Practical Introduction to Copyright* (London: McGraw-Hill, 1982) 23.

<sup>11</sup> See, for instance, 'Composers' Fees: Divergent Views', *The Daily Telegraph*, 13 July 1914, 11.

<sup>12</sup> Alan Peacock and Ronald Weir, *The Composer in the Market Place* (Faber Music, 1975) 47; For a study of the establishment of the Spanish society, see Sinesio Delgado, *Mi Teatro. Cómo nació la Sociedad de Autores* (Madrid, SGAE, 1999); see also generally Daniel Gervais and Phillip Landolt (eds), *Collective Management of Copyright and Related Rights* (Kluwer Law International, 2006).

<sup>13</sup> 'Performing Rights and Performers' Wrongs' *The Musical Times*, 1 May 1917, 205.

<sup>14</sup> 'The Performing Right Controversy', *The Observer*, 19 July 1914, 4.

(1876-1968) and Paul A. Rubens (1875-1917),<sup>15</sup> the peculiar nature of the alliance made the establishment of the collective enterprise more complicated than the *Observer* realised. A substantial number of composers were reluctant to participate as there already existed other options, or at least some other associations in which composers had been discussing copyright issues for a long time and that were opposed to the alliance.

Perhaps the most significant opposition to the collective enterprise was that of the Incorporated Society of Authors, a well-known lobby for copyright protection of authors, playwrights and composers.<sup>16</sup> In August 1914, just a few months after the creation of the PRS, the Society discussed the possibility of a joint arrangement to collect performing rights, but the negotiations dramatically failed.<sup>17</sup> According to the Society of Authors, one of the difficulties in this negotiation came directly from a number of composers, who had already joined the PRS, probably attracted by the idea that ‘half a loaf [was] better than no bread’.<sup>18</sup> In doing so, these composers had already compromised any collective capacity for action. Additionally, another important aspect that could have contributed to the failure of the negotiation was – according to the Society of Authors – the background of the first

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<sup>15</sup> For a list of initial members, see ‘Minutes, 1 April 1914, 6’, PRS Committee Minute Book 1; PRS Archives; see also *Twenty-Five Years of PRS (1914-1939): being a souvenir of the Silver Jubilee of the Performing Right Society* (London: Performing Right Society, 1939) 4.

<sup>16</sup> Christopher Hilliard, *To Exercise Our Talents: The Democratization of Writing in Britain* (Harvard University Press, 2006) ch. 1; Victor Bonham-Carter, *Authors by Profession, Vol. 2* (The Bodley Head Ltd, 1984).

<sup>17</sup> ‘Minutes, 29 July 1914; 28’ [reporting the correspondence between PRS and the Society] Committee Minute Book 1; PRS Archives.

<sup>18</sup> ‘Performing Rights Society: Report of an interview with the Secretary, 4 August 1914’, in Add Mss 56897; Society of Authors; British Library Archives.

director of the PRS, Pierre Sarpy (?-1915).<sup>19</sup> Sarpy had made his name as the representative of the French copyright collecting society, the Société des auteurs, compositeurs et éditeurs de musique (SACEM), as well as in the course of his subsequent struggle to organise a similar society in England.<sup>20</sup> After succeeding in establishing a virtual ‘monopoly, he appear[ed] to be frightened of any alteration, opposition or criticism’.<sup>21</sup> While Sarpy’s sudden death in February 1915 might have paved the way for a more receptive environment that could have facilitated agreement between the societies, the fact is that the two societies continued in head-to-head confrontation for almost two decades.<sup>22</sup> At times the tension between the societies became particularly acute.<sup>23</sup> This was not only the understandable response of interested constituencies to the emergence of the PRS, but also at issue was the right to influence how the ‘music industry’ was going to be constituted. For instance, an inflammatory letter signed by members of the Society of Authors appeared in *The Times* in 1917, positioning eminent composers such as Edward Elgar (1857-1934) and Walter Parratt (1841–1924) against the PRS.<sup>24</sup> A hard-hitting response from William Boosey, of Chappell & Co and the first chairman of the PRS, soon followed.<sup>25</sup> Much of the controversy sprang from a disagreement regarding the methods of

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<sup>19</sup> ‘Death of Pierre Sarpy’, *The Music Trade Review*, no. 12, 20 March 1915, 57; ‘Obituary: Pierre Sarpy’, *The Musical Times*, Vol. 56, No. 866, 1 April 1915, 221; ‘Death of Pierre Sarpy’, *Talking Machine World*, Vol. IX, No. 1, January-December 1915, 34.

<sup>20</sup> *Sarpy v Holland and Savage* [1908] 2 Ch. 198.

<sup>21</sup> ‘Performing Rights Society: Report of an Interview with the Secretary, 4 August 1914’ in Add Mss 56897; Society of Authors; British Library Archives.

<sup>22</sup> ‘The Performing Rights Society and Some Objectors’, *The Author*, October 1922, 25-26; ‘The Performing Right Society’, *The Author*, July 1926, 121-123;

<sup>23</sup> ‘The Performing Rights Compromise’, *Musical News*, Vol. 53, 1917, 1.

<sup>24</sup> ‘Composers and their Work’, *The Times*, 12 October 1917, 9.

<sup>25</sup> ‘Performing Rights’, *The Times*, 13 October 1917, 9.

the PRS in the conduct of its business. According to the Society of Authors, these methods ‘were adverse to the best interests of British Music and affected seriously both the public and the composers’.<sup>26</sup>

While William Boosey was explicit about the ongoing efforts of the PRS to generate trust in order to integrate what some saw as natural antagonists (composers and publishers), the fact is that for the first decades this proved to be difficult.<sup>27</sup> Although he had long lobbied for copyright recognition in Parliament,<sup>28</sup> the situation had changed significantly. The aim now was not to defend copyright from the perspective of publishers but to generate consensus and build alliances between composers and publishers.<sup>29</sup> In May 1917 he replied to direct accusations that he was chairing a society created by publishers *for* publishers by pointing out that its governing structure consisted of eight composers and authors and seven publishers.<sup>30</sup> Even if this parity would seem to have been a fair and representative distribution of power, there were voices asking how the governing structure had been established. They demanded a greater presence of authors on the Executive Committee of

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<sup>26</sup> ‘Composers and their Performing Rights’, *The Author*, December 1917, 53-54; see also G. Herbert Thring ‘Performing Rights’, *The Times*, 17 October 1917, 6.

<sup>27</sup> William Boosey, *Fifty Years of Music* (London, Ernest Benn, 1931) 174; see also letter from PRS Controller (Booth) to G. Herbert Thring, Society of Authors 14 March 1917; Add Mss 56897/1053B; British Library Archives.

<sup>28</sup> Isabella Alexander, *Copyright Law and the Public Interest in the Nineteenth Century* (Oxford: Hart, 2010) 267; ‘William Boosey’ *The Musical Times*, June 1933, 559; C.F. James, *The Story of the Performing Right Society* (London: Performing Right Society, 1951) 67.

<sup>29</sup> Peacock and Weir considered the creation of the PRS as a ‘considerable diplomatic achievement in view of the heterogeneous interests in the sheet music market’; see Alan Peacock and Ronald Weir, *The Composer in the Market Place* (Faber Music, 1975) 69; see also Terri Anderson, *Giving Music its Due* (London: MCPS-PRS, 2004) 84.

<sup>30</sup> *The Musical Times*, 1 May 1917, 207.



the Society. According to these critics, authors and composers were still poorly represented on the Committee since at least ninety per cent of the members of the PRS were composers. For example, George Herbert Thring (1859-1941), secretary of the Society of Authors, suggested that ‘there should be at least nine composers and authors to one publisher in every ten members of the committee’.<sup>31</sup> This grievance, which the Society of Authors described as the ‘ineffectual representation of composers in the management of a Society which purports to represent them’ lasted into the 1920s.<sup>32</sup> At times the conventional courtesies fell by the wayside.<sup>33</sup> Adrian Ross (1859-1933), one of the founding members of the PRS, bristled at these critics, giving an explanation for the limited representation of composers in managerial positions. According to him, ‘composers as a class do not care to be on committees’ and ‘if run by a Committee of Composers, the PRS would either not have come into being at all, or would not have survived its first lawsuit’.<sup>34</sup> Ironically, the event that changed the situation was the campaign against the introduction of the Musical Copyright Bill (1930).<sup>35</sup> Acting against a common enemy

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<sup>31</sup> *The Musical Times*, 1 May 1917, 207.

<sup>32</sup> ‘The Performing Rights Society and Some Objectors’, *The Author*, October 1922, 25-26; Adrian Ross, ‘A Word in Answer’, *The PR Gazette*, Vol. 1, No. 3, Jan 1923, 60-61. ‘The Performing Right Society’, *The Author*, July 1926, 121-123.

<sup>33</sup> ‘The Chairman of our Board of Directors has handed me your letter of the 3rd inst., with directions to intimate to you that he suggests you should attend to your own business and leave us to attend to ours’ in letter from C.F. James (PRS) to G. Herbert Thring (Society of Authors), 7 May 1926, *The Author*, July 1926, 122.

<sup>34</sup> Adrian Ross, ‘A Word in Answer’, *The PR Gazette*, Vol. 1, No. 3, Jan 1923, 60-61.

<sup>35</sup> Report from the Select Committee on the Musical Copyright Bill, London: HMSO, 3 July 1930; see also letter from C.F. James (PRS) to Thring (Society of Authors), 1 January 1930; in Add Mss 56897; Society of Authors; British Library Archives; see also Victor Bonham-Carter, *Authors by Profession, Volume Two: 1911-1982* (London: The Bodley Head, 1984) 50.

bound the Society of Authors and PRS together.<sup>36</sup> After this, they increasingly found common interests, started acknowledging each other's qualities and began sharing information about international and domestic copyright.<sup>37</sup> More importantly, the Society of Authors passed from outrage at the methods and structure of the PRS to recommending that its members, particularly those whose work could be 'musicalised', join up.<sup>38</sup>

### *Further alliances: Publishers*

It is also important to note that the lack of consensus was also experienced by music publishers.<sup>39</sup> Not all music publishers reacted with enthusiasm to the idea of setting up a society in which royalty arrangements were agreed collectively.<sup>40</sup> Although it is understandable that a substantial number of composers should end up putting their rights in the hands of a society initiated by publishers, it is not so clear how the PRS gradually reduced the initial degree of polarisation and discrepancies among music publishers,<sup>41</sup>

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<sup>36</sup> 'Musical Copyright: Composers and the Bill', *The Times*, 16 December 1929; see also letter from Kilham Roberts (Society of Authors) to C.F. James (PRS), 9 June 1934, emphasising 'the friendship which now exists between our two societies' in Add Mss 56897; Society of Authors; British Library Archives.

<sup>37</sup> G.A. Hatchman (PRS) to W.A. Fuller (Society of Authors), 23 January 1934 [regarding the Argentine Copyright Act]; and Kilham Roberts (Society of Authors) to C.F. James (PRS), 23 February 1934 [sending Counsel Opinions: (*Gramophone Co., Ltd. v. Stephen. Carwardine Co* [1934] 1 Ch 450)]; in Add Mss 56897; Society of Authors; British Library Archives.

<sup>38</sup> Kilham Roberts (Society of Authors) to Leslie Boosey (PRS), 23 July 1934, in Add Mss 56897; Society of Authors; British Library Archives.

<sup>39</sup> Paul Francis Kildea, *Selling Britten: Music and the Marketplace* (Oxford: Oxford University Press, 2002) 28; see also 'Music publishers who are not members of the PRS' (1923-1926); R12/158/1; BBC Written Archives.

<sup>40</sup> Friedemann Kawohl and Martin Kretschmer, 'Abstraction and Registration: Conceptual Innovations and Supply Effects in Prussian and British Copyright (1820-50)', *Intellectual Property Quarterly*, issue 2, 2001, 209-228.

<sup>41</sup> PRS Archives, General Committee Meeting, 9 December 1926; 11 ['non-member publishers'].

particularly among classical music publishers.<sup>42</sup> These music publishers were more reluctant to join the society because they assumed that the business of classical music was ‘totally different’ from that of light music.<sup>43</sup> In fact, William Boosey was to discover that one of the music publishers radically opposing the idea of a collecting society was a company owned by his own family, a company he had left twenty years earlier: Boosey & Co.<sup>44</sup> Another major classical music publisher, Novello & Co., was also initially unconvinced by the methods proposed by the new society.<sup>45</sup> There were different reasons why these and other publishing houses were not initially persuaded. For instance, in the late 1910s classical music publishing houses were still relying primarily on different copyright models and this was based on the assumption that collecting the performing fee might discourage musicians from buying scores, particularly of vocal works.<sup>46</sup>

A key element that appears to have helped to persuade the group of reluctant publishers of the benefits of collective management was the expectation generated by media

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<sup>42</sup> See also other music publishers such as Stainer & Bell Ltd, who ‘did not desire to take up membership of the society’, in PRS Archives, Board Meeting, 13 April 1926; 56.

<sup>43</sup> ‘Composers’ Fees: Light and Serious Music’ *The Daily Telegraph*, 14 July 1914, 11.

<sup>44</sup> ‘Messrs. Boosey’s Criticism’, *The Daily Telegraph*, 14 July 1914, 12; *The Musical Times*, 1 May 1917, 207; ‘Singing Rights’, *The Observer*, 10 August 1913; 5.

<sup>45</sup> ‘Composers’ Fees: Messrs. Novello’s Attitude’, *The Daily Telegraph*, 16 July 1914, 11; ‘Orchestral Pieces’ *The Daily Telegraph*, 17 July 1914, 9; Alan Peacock and Ronald Weir, *The Composer in the Market Place* (London: Faber, 1975) 72. Two decades after the formation of PRS, there were still three important music publishers who were not members of the Society: Novell, Stainer & Bell and the Oxford University Press; see letter from C.F. James (PRS) to Kilham Roberts (Society of Authors), 8 May 1934; in Add Mss 56897; Society of Authors; British Library Archives.

<sup>46</sup> See, generally, John Drysdale, *Elgar’s Earnings* (London: Boydell Press, 2013) 109-127.

technologies like automatic pianos, radio, cinema and later television broadcast.<sup>47</sup> One of the first major licences issued by the PRS was to the British Broadcasting Corporation (BBC).<sup>48</sup> Less than a decade after its creation, the Society was able to secure regular income for its members when musical works of its repertoire were used by the public institution.<sup>49</sup> Although radio appears now to be a ‘natural’ space for performing rights, it was not so in the early 1920s. In that sense, collective management drew attention to uncharted territories in order to find new revenue streams.<sup>50</sup> By broadening the emphasis from public performance to radio broadcast, the Society enhanced the capacity of music copyright to produce more income.<sup>51</sup> That this possibility was not so clear at the time can be seen in the way the BBC repeatedly sought legal counsel on the subject. The Corporation was particularly interested in anticipating and knowing the legal consequences of not having a licence from the PRS.<sup>52</sup> The barristers consulted were, somewhat

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<sup>47</sup> Cyril Ehrlich, *Harmonious Alliance. A History of the Performing Right Society* (Oxford: Oxford University Press, 1989) 46; Annette Davison, ‘Workers’ Rights and Performing Rights: Cinema Music and Musicians Prior to Synchronized Sound’, in Julie Brown and Annette Davison (eds) *The Sounds of the Silents in Britain* (Oxford: Oxford University Press, 2012) 243-262;

<sup>48</sup> Asa Briggs, *The History of Broadcasting in the United Kingdom*, Vol. I (1951) 250-3; Gavin McFarlane, *Copyright: The Development and Exercise of the Performing Right* (City Arts, 1980) 147; John Drysdale, *Elgar’s Earnings* (London: Boydell Press, 2013) 179; ‘Broadcast Royalties’, *Daily Mail*, 27 July 1923, 5.

<sup>49</sup> See, generally, Michael Payne, *The Life and Music of Eric Coates* (Ashgate, 2012).

<sup>50</sup> ‘Amongst several important matters engaging the Society’s close attention at the moment are two of outstanding interest. One is the question of broadcasting music, in which connection everything possible is being done to safeguard the interests of our members’, in ‘Editorial’, *The PR Gazette*, Vol. 1, No. 3, Jan. 1923, 51; ‘Broadcasting War’, *Daily Mail*, 5 May 1923, 7.

<sup>51</sup> Similarly, composers were often given the advice of joining PRS to earn a supplemental income; see Stephen Lloyd, *William Walton: Muse of Fire* (The Boydell Press, 2001) 213; see also Cyril Ehrlich, *The Music Profession in Britain since the Eighteenth Century* (Oxford: Clarendon Press, 1985) 212.

<sup>52</sup> ‘Copyright: Specific Questions put to Sir Duncan Kerly, KC’, November 1924; R12/158/1; BBC Written Archives.

surprisingly, Sir Duncan Kerly, KC (1880-1945) and Herbert du Parc, KC (1880-1949).<sup>53</sup> They were unanimous and clear that ‘assuming there were no licence from the Performing Right Society to the Company’, the BBC did infringe and was liable to an injunction and damages.<sup>54</sup> Despite, or perhaps because of, the fact that the barristers considered that the final decision of acquiring a licence (or not) also depended on commercial considerations,<sup>55</sup> the BBC decided to limit the arrangements with the PRS to short-term contracts,<sup>56</sup> the renewals of which involved protracted and difficult negotiations.<sup>57</sup> A sense of how this was important in persuading other music publishers can be perceived in the way in which the negotiations and renewals with the BBC were handled. The PRS systematically negotiated the BBC licence with representatives of the non-member publishers.<sup>58</sup> In fact, the BBC suggested a joint arrangement with music publishers who

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<sup>53</sup> The surprise comes because neither Kerly nor du Parc were copyright experts. They were respectively trade mark and commercial advocates. Perhaps their selection was just a consequence of the market of legal expertise. The two main copyright experts have been retained to advise the Society of Authors and the PRS. While Evan James MacGillivray (1873-1955) was linked to the Society of Authors, Stephen Henn-Collins (1875-1958), another expert on copyright was frequently the barrister advising the latter. For some references to Collins’ practice, see David Foxton, *The Life of Thomas E. Scrutton* (Cambridge University Press, 2013) 106.

<sup>54</sup> ‘Joint Opinion by Duncan Kerly and Herbert du Parc’, 4 December 1924; R12/158/2; BBC Written Archives.

<sup>55</sup> In 1926 the solicitor Frank Gaylor wrote to G.V. Rice, Secretary of the BBC that ‘the question of resisting to the point of litigation was fully considered’; Gaylor to Rice, 12 April 1926; R12/158/1; BBC Written Archives.

<sup>56</sup> ‘A contract has been concluded between the Society and the British Broadcasting Company, Ltd, for the use of the Society’s repertoire at each of the Company’s eight main and independent wireless telegraph stations at Aberdeen, Birmingham, Bournemouth, Cardiff, Glasgow, London, Manchester, and Newcastle, and also for its relay stations, such as Sheffield, for the period ending January 1, 1926’, in ‘Broadcasting’ *The PR Gazette*, Vol. 1, No. 6, October 1923, 151.

<sup>57</sup> A decade after the first agreement, the PRS and the BBC decided to submit their negotiating disputes to arbitration, see Cyril Ehrlich, *Harmonious Alliance: A history of the Performing Right Society* (Oxford: Oxford University Press, 1989) 66.

<sup>58</sup> PRS Archives, General Committee Meeting, 19 February 1926; 25.

were members of the PRS and those who had not joined.<sup>59</sup> And it was the nature of these negotiations that seems to have influenced the decision of Boosey & Co. and other music publishers to join the Society in 1926.<sup>60</sup>

Leaving aside the domestic expansion of the Society, another important factor that served to persuade music publishers to join the Society was its international scope. The PRS rapidly began arranging contracts with the American Society of Composers, Authors and Publishers (ASCAP), SACEM, Germany's Gesellschaft für musikalische Aufführungs (GEMA) and Spain's Sociedad General de Autores y Editores (SGAE), incorporating them as trading partners.<sup>61</sup> These foreign alliances were first seen as problematic and reinforced a perception of the Society as being 'un-English'.<sup>62</sup> However, such criticisms were rapidly overcome as the PRS enhanced the possibility of licensing the repertoire abroad.<sup>63</sup> In that sense, the impact of these alliances was profound since they elicited a particular view of the relationship of copyright and 'national culture', superseding the idea of copyright in the

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<sup>59</sup> Letter from the Secretary (BBC) to the Controller (PRS), 23 March 1926; R12/158/2; BBC Written Archives.

<sup>60</sup> PRS Archives, Boosey & Co, letter from Leslie Boosey to J. Woodhouse, 24 March 1926; John Drysdale, *Elgar's Earnings* (London: Boydell Press, 2013) 163-165.

<sup>61</sup> As William Boosey reported, 'our position is very strong, because copyright agreements between the various countries are reciprocal', in 'Composers' Fees' *The Daily Telegraph*, 11 July 1914, 12. See also PRS Archives, General Committee Meeting, 2 March 1926; 33 [Continental Performing Rights Societies]; see also 'The Society's Foreign Repertoire' *PRS Gazette*, Vol. 1, July 1922, 3-4.

<sup>62</sup> 'Composers' Fees', *The Daily Telegraph*, 13 July 1914, 11. A brief reference to these criticisms is found in Terri Anderson, *Giving Music its Due* (London: MCPS-PRS, 2004) 86.

<sup>63</sup> PRS Archives Board Meeting 10 September 1942 ['The Secretary reported the request made by Novello & Co. Ltd that the society should undertake the collection of fees for the performance of their large choral works in Canada']; see also Gavin McFarlane, *Copyright: The Development and Exercise of the Performing Right* (City Arts, 1980) 98.

nineteenth century that ‘works protected by copyright were cultural, unique and local’.<sup>64</sup> Interestingly, an increasingly significant legitimising factor of the Society was the imperative of efficiency. Above all, the PRS increased the ability of music copyright to generate royalties and collect fees here and abroad.<sup>65</sup> It is revealing that many of the misgivings were defeated by the mantra of ‘value for money’. Precisely because the Society was predicated on the formula of maximising benefit from copyright, it became the model for the majority of music publishers.<sup>66</sup> That this was an important element that functioned to attract publishers is also illustrated in the way the PRS gave different treatment to classical music, the publishers of which were among the most reluctant to join.<sup>67</sup> It is well-known that for several decades the Society gave ‘classical music’ a cross-subsidy, transferring funds to it from other more profitable ventures.<sup>68</sup> Lastly, another element that seems to have convinced previously reluctant music publishers to join the Society was a certain flexibility in its approach to membership.<sup>69</sup> Curiously, the case for unity began to be built on diversity.<sup>70</sup> Music publisher membership was flexible, taking

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<sup>64</sup> Brad Sherman and Lionel Bently, *The Making of Intellectual Property: The British Experience, 1760-1911* (Cambridge University Press, 1999) 125.

<sup>65</sup> PRS Archives, Boosey & Co, Foreign Fee Inwards, Distribution No. 16, June 1932.

<sup>66</sup> ‘M.R.S’ *Billboard*, 6 November 1976, 51 [‘Britain’s contribution to the cause of international protection of intellectual copyright has long been recognized as a major one, and in the field of musical works the PRS enjoys a reputation for probity, efficiency and impartiality which is second to none’.

<sup>67</sup> Helen Wallace, *Boosey & Hawkes. The Publishing Story* (London: Boosey & Hawkes, 2007) 207-208.

<sup>68</sup> Julian Silverman, ‘Book review: Selling Britten’, *Tempo*, Vol. 58, October 2007, 60-73; 72.

<sup>69</sup> ‘Editorial’, *The PR Gazette*, Vol. II, No. 4, April 1926, 75 ‘in fact, as our Vice-Chairman, Mr Adrian Ross, said at the meeting on March 2, ‘The Articles are not sacred scriptures, and have been altered before. In any event, the changes were asked for by the incoming group, and they were conceded by the unanimous resolutions of the members’.

<sup>70</sup> In the 1920s, the assignment to the Society of the Performing Right was optional. PRS was recommending the assignment in order to enable the society to take legal proceedings but it did not require it to become a member of the Society; see PRS Archives, Boosey & Co, letter from Leslie Boosey, 23 March 1926.

into account the special characteristics of music consumption. So, the PRS welcomed some classical publishers even though they withheld significant parts of their repertoire.<sup>71</sup> An illustration of this point can be seen in the way oratorios and large choral works were not collectively managed until the late 1940s. For almost a decade after joining the Society, several music publishers, including Novello & Co. and Boosey & Co., undertook their own collections of performing rights fees in relation to this category of works.<sup>72</sup>

After the establishment of the PRS, and no doubt because of the features described above, classical music publishers developed different practices to augment their catalogues. For instance, Boosey & Co. entered into agreement with The Cavendish Music Ltd. and acquired the Zimmerman catalogue. Building up an extensive portfolio of songs was a strategic way of benefiting from the worldwide network created by the PRS. In that sense, when the history of international copyright comes to be written (or, perhaps more accurately, re-written) it would be wise to address how companies deliberately acquired catalogues as countries came to adhere to the Berne convention. However, the most significant amalgamation that took place in the early 1930s was between Boosey and Hawkes,<sup>73</sup> who joined eponymously to form one of the leading international publishers of the twentieth century.<sup>74</sup> The history of this alliance can only be explained by reference to

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<sup>71</sup> PRS Archives, Boosey & Co, letter from Leslie Boosey, 6 April 1926 [‘You can collect on anything in our catalogue with the exception of the Sullivan works’].

<sup>72</sup> ‘Choral works and Performing Rights’, *The Musical Times*, September 1950, 359; PRS Archives, Boosey & Co, letter from Leslie Boosey, 14 April 1926 [including the form of exemption from collection in respect of choral works’]; John Drysdale, *Elgar’s Earnings* (London: Boydell Press, 2013) 164.

<sup>73</sup> PRS Archives, Boosey & Co, letter from Boosey & Co and Hawkes & Son, 7 October 1930.

<sup>74</sup> Ernst Roth, ‘The vision of Ralph Hawkes’, *Tempo (New Series)*, Supplement S78 / autumn 1966, pp 6-8; ‘Hawkes and Son and Boosey & Co’, *The Stage*, 27 November 1930.



the PRS. Both music publishers met on the board of the PRS in the late 1920s.<sup>75</sup> Leslie Boosey (1887–1979) later became chair of the Society, while Ralph Hawkes took over the representation of the PRS in New York.<sup>76</sup>

## 2. Methods of collecting

One of the most frequent criticisms aimed at the PRS was not related to the collecting of performing fees itself, but rather the methods of doing so.<sup>77</sup> Although the idea of charging fees for performing rights became gradually accepted as a legitimate collective endeavour,<sup>78</sup> the manner in which the PRS conducted its work provoked concern and caused substantial friction. Opponents and critics were greatly disturbed by the manner in which the Society intervened in many different areas and used – as it was termed – an obscure way of levying fees.<sup>79</sup> This led some musical conductors such as Sir Thomas

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<sup>75</sup> Paul Kildea, *Benjamin Britten: A Life in the Twentieth Century* (Allen Lane, 2013) 87; 93-94; 142; see also Helen Wallace, *Boosey & Hawkes. The Publishing Story* (London: Boosey & Hawkes, 2007) 8.

<sup>76</sup> 'Obituary: Ralph Hawkes', *The Sunday Times*, 10 September 1950; 7; C.F. James, *The Story of the Performing Right Society* (London: Performing Right Society, 1951) 128.

<sup>77</sup> 'Composers' Fees', *The Daily Telegraph* 15 July 1914, 11; 'Correspondence', *The PRS Gazette*, Vol. 1, No. 2, October 1922, 35-36 [letter from Mr J.B. Williams] 'The destruction of the PRS would in no way deprive the composer of any rights; therefore when fighting the PRS on account of its methods, I have in no way attacked the rights of composers'; see also 'Performing Rights', 62nd Co-Operative Congress, York, 1930 (Manchester: Co-Operative Union, 1930) 431-432.

<sup>78</sup> See, for instance, 'Performing Rights: A New Aspect', *The Musical Mirror*, August 1923, 236.

<sup>79</sup> Arthur Eaglefield Hull (1876-1928) noted that 'the claims of the PRS on their own music are, perfectly lawful, but their way of levying them appears in many cases arbitrary', *Musical News and Herald* of 20 January 1923 cited in 'Performing Rights', *The PR Gazette*, Vol. 1, No. 3, April 1923, 79.

Beecham (1879-1961) to refuse to play any works controlled by the PRS.<sup>80</sup> However, the most interesting opposition came from the Amalgamated Musicians' Union (AMU),<sup>81</sup> a trade union of performing musicians that considered that the way performing fees were being charged directly affected musicians' labour conditions.<sup>82</sup> Although the collecting society was strategic in not charging performing fees directly to performers in order to avoid direct confrontations, in 1918 the trade union claimed against the practice of 'fixing fees' for the size of the orchestra; that is, 'charging entrepreneurs per musician's head' in the orchestra they hired.<sup>83</sup> This practice – the trade union argued – had the knock-on effect of reducing the number of musicians hired by managers.<sup>84</sup> Severe animadversion against this policy escalated to the point that the trade union decided to boycott the PRS by asking its members not to play music from the PRS repertoire.<sup>85</sup> This protest made some music

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<sup>80</sup> William Boosey to Holbrooke, 3 September 1917; MS79/3; Josef Holbrooke Collection, University of Birmingham Archives.

<sup>81</sup> For a history of the trade union, see A. David-Guillou, 'Early musicians' unions in Britain, France, and the United States: on the possibilities and impossibilities of transnational militant transfers in an international industry', *Labour History Review* 74(3), 2009, 288-304.

<sup>82</sup> 'General Office Notes, December 1918 by ES Teale', *Amalgamated Musicians Union Monthly Report and Supplement*, No. 230, January 1919, 1 ['Look out and act on instructions issued re the Performing Rights' Society. Ask your Branch Secretary about it']; MU/1 /1-6; University of Stirling Archives.

<sup>83</sup> 'Minutes Executive Committee (AMU), 8 October 1918'; MU/2/1; University of Stirling Archives; see also 'Song Strike', *Daily Mail*, 31 December 1918; 3; 'Performing Rights', *The Daily Telegraph*, 7 January 1919, 6.

<sup>84</sup> 'Performing Rights', *Musicians' Report and Journal*, November 1918, 1; MU/1 /1-6; University of Stirling Archives.

<sup>85</sup> 'Minutes Executive Committee (AMU), 18 February 1919'; MU/2/1; University of Stirling Archives; 'Theatre Songs', *Daily Mail*, 30 December 1918; 3; see also 'Musicians Fight British Society', *The New York Clipper*, 1 January 1919, 17.

publishers resign from the PRS.<sup>86</sup> More importantly, it triggered the change of tariffs by the PRS.<sup>87</sup>

Although the controversy was settled, the interesting issue to highlight here is that methods of collection went beyond merely administrative requirements; they also had implications for the distribution and development of musical labour.<sup>88</sup> In fact, this controversy is one of the many examples that force us today to reflect on the difficulty of finding evidence of the impact of copyright in society and the unpredicted effects of copyright policies. Another subtle illustration of these collateral effects of copyright policies came with what some scholars have identified as the gradual dilution of the boundary between private and public spaces.<sup>89</sup> As is well known, the Society focused on many fronts in order to define what performing ‘in public’ meant.<sup>90</sup> Firstly, the Society brought actions against obvious places of entertainment such as clubs, cinemas and halls.<sup>91</sup> By turning the attention to premises instead of instruments,<sup>92</sup> to givers of entertainments instead of entertainers,<sup>93</sup> the Society

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<sup>86</sup> ‘B. Feldman quits Society’, *The New York Clipper*, 4 June 1919, 20.

<sup>87</sup> ‘PRS v AMU’, *Daily Mail*, 15 April 1919, 8; C.F. James, *The Story of the Performing Right Society* (London: Performing Right Society, 1951) 29.

<sup>88</sup> Gavin McFarlane describes this episode as a ‘diplomatic blunder’ in Gavin McFarlane, *Copyright: The Development and Exercise of the Performing Right* (City Arts, 1980) 100.

<sup>89</sup> ‘Commons and Music Copyright’, *The Manchester Guardian*, 23 November 1929; 18.

<sup>90</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law* (Oxford University Press, 2015) 171-172.

<sup>91</sup> ‘The Performing Rights Society: Questions of Copyright’, *The Observer*, 5 January 1919: 7.

<sup>92</sup> ‘How the Society assists Licensees’, *PRS Gazette*, vol. 1, July 1922, 4; see also PRS Archives; Tariffs and Legal Committee, 24 April 1926; 59 [‘The controller also reported the correspondence and interview he had with the Up-to-date Music Roll Co. and referred to their proposal to pay a fee to the society in respect of each roll manufactured by them and the roll to be stamped or otherwise marked to indicate that it was licensed by the society for a certain period. It was agreed that this proposal was impracticable in operation and the Committee directed that each fee for

tried to avoid directly charging musicians as performers but could not avoid the indirect ways in which performers were affected, either as promoters of entertainments or, more indirectly, by not being called by a manager who wanted to reduce the fee by hiring fewer musicians.<sup>94</sup> While the system of tariffs changed to charge premises by their seating or dancing capacity instead of the number of musicians hired,<sup>95</sup> the most interesting issue to note here is that the Society developed an impressive capacity to adapt and reformulate licensing schemes to bridge the gap between its remit and the licences.<sup>96</sup> Such elasticity paved the way for a distinctive copyright culture to emerge.<sup>97</sup> The shift of perspective towards premises facilitated the rise of a culture of compliance,<sup>98</sup> giving organisers and pub owners the opportunity to manage risk beforehand by pre-empting any copyright

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each instrument should as hitherto, be collected from the owners of the instruments or the proprietors of the premises in which they are used’].

<sup>93</sup> Boosey & Co, circular letter to Boosey & Co., 9 November 1929; PRS Archives.

<sup>94</sup> ‘Dance Music’, *The PR Gazette*, Vol. II, No. 5, July 1926, 121.

<sup>95</sup> See, for instance, Weavers’ Institute in Burnley, seating and dancing capacity; letter from the Licence Accounts Department (PRS) to Robinson Graham (Weavers’ Institute); 21 April 1943; DDX 1274/10/9; Lancashire Record Office.

<sup>96</sup> ‘It has always been the Society’s policy to negotiate a tariff, whenever practicable with the representative association or associations concerned, if any’ in *Music and the People: The Composer, the Music-user, and the Performing Right Society* (London: Performing Right Society, 1959) 7; see also ‘Opinion of F.E. Skone James: Revision of Licences, 1945’ and ‘Further Opinion of F. Skone James: Amendments to PRS Licences, 1945’ [concerning the gap between licences and assignments]; Solicitors’ Files 3; PRS Archives.

<sup>97</sup> ‘Notes to schedule of works and licensed showing changes desired in licenses’, 12 February 1946; Solicitors Files 2; PRS Archives. As the ‘memorandum on Counsel’s Opinion of 22 December 1944’ noted ‘since the Society’s inception, the various forms of licence have been amended many times’.

<sup>98</sup> Pamphlets sent to prospective licensees emphasised what PRS described as ‘the danger’ or ‘the risk’ of being unlicensed; see ‘The Performing Right Society- Pamphlet H’; AP91/33/1B; Herefordshire Archive Services; see also ‘The Performing Right Society’, *The Melody Maker and British Metronome*, October 1927, 957.

problem.<sup>99</sup> In this sense, the Society fought to become indispensable at the level of the local in order to function as an index for entire collective bodies to issue recommendations as to the need to apply for a music licence from the PRS. It is not a surprise then that some associations of publicans and victuallers even directly approached the society in order to try to arrange comprehensive schemes that could cover their members.<sup>100</sup>

For this culture of compliance and responsible management to develop, the perseverance of the Society was crucial. The Society was particularly good when it came to following up issues, sending letters and reminders for prospective licensees as to the need to comply.<sup>101</sup> In fact, it developed a system of follow-ups whereby the strength to obtain licences was premised upon an extraordinary persistence.<sup>102</sup> This understandably irked some people. For instance, the secretary of the Diocesan Church House in Hove told a colleague in January 1938: 'It is all very tiresome and they [PRS] are not an easy crowd of people to deal with. On the whole, I think it would be safer for you to pay this tiresome tax.'<sup>103</sup> It is not just that

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<sup>99</sup> 'Performing Rights Society', *The Observer*, 18 March 1934, 23; Cyril Ehrlich, *The Music Profession in Britain since the Eighteenth Century* (Oxford: Clarendon Press, 1985) 198.

<sup>100</sup> Memo of a phone call from Alfred Lugg, Secretary of the Licensed Victuallers Association (London); 9 May 1927 Licensed Victuallers Central Protection Society of London; PRS Archives.

<sup>101</sup> 'We beg to remind you we are without a reply to our letter of the 30th ult.'; Woodhouse (PRS) to O/C Dept, Berwick-on-Tweed; 30 April 1928; Purchase of licence from PRS; necessity of licence in Regimental Institutions; WO 32/14914; National Archives, Kew.

<sup>102</sup> For instance, see the frequent follow-up letters written by C.F. James (PRS) to the Sec. of the Committee, Church Room, Beds, 22 August 1929; 7 September 1929; 21 September 1929; 5 October 1929; 6 November 1929; 20 November 1929; 10 December 1929; 31 December 1929; P142/2/6/5; Bedfordshire and Luton Archives and Records Service.

<sup>103</sup> W. Godfrey Bell (Secretary) Diocesan Church House (Hove) to the Rev. HT Mogridge, (Rector), 19 January 1938; Correspondence and papers concerning entertainment licences from Hove Borough Council and the Performing Right Society; PAR 228/10/8/11; East Sussex Record Office Records.

the PRS was enormously influential in the development of the music industry. It is also important to consider the knock-on effect of its activities, particularly in so far as the boundary between the interests of composers, managers and publishers became increasingly difficult to differentiate. While some historians have suggested that these hitherto separate interests were converging, our suggestion is that it actually facilitated the emergence of a different ‘copyright culture’. The constitution of what came to be called ‘the music industry’ was increasingly embedded in and defined by these socio-legal arrangements.

### **3. Litigation and its uses**

As has been noted by several scholars, the performing right gave rise to enforcement challenges.<sup>104</sup> However, the litigation-oriented practices developed by the PRS went beyond mere enforcement.<sup>105</sup> For instance, the struggle for recognition of the performing right involved not only a push for collective action but also financial support for individual music publishers, such as Chappell & Co., in their pursuit of injunctions and damages.<sup>106</sup> The Society also went to great lengths to force the legal definition of performing ‘in public’ within the meaning of the Copyright Act (1911).<sup>107</sup> In order to make this possible,

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<sup>104</sup> Michael Birnhack, *Colonial Copyright: Intellectual Property in Mandate Palestine* (Oxford University Press, 2012) 165; Gavin McFarlane, *Copyright: The Development and Exercise of the Performing Right* (City Arts, 1980) 101.

<sup>105</sup> Robert Montgomery and Robert Threlfall, *Music and Copyright: The Case of Delius and His Publishers* (Ashgate, 2007) 7.

<sup>106</sup> PRS Archives, General Committee, 2 March 1926, 39-40 [‘Embassy Club’].

<sup>107</sup> ‘Songs in Public’, *The Sunday Times*, 23 November 1924; 17; Gavin McFarlane, *Copyright: The Development and Exercise of the Performing Right* (City Arts, 1980) 101; 103-110.

in the early 1920s the PRS established a permanent legal department.<sup>108</sup> It was managed by Clarence Goullee Syrett (1875-1951), a copyright lawyer who ran a law firm with his brother Herbert Sutton Syrett (1878-1959).<sup>109</sup> For more than four decades, the law firm helped the PRS and its members, frequently advising them on their different options – settlement or litigation.<sup>110</sup> Although the litigious character of the Society has been historically documented, it is interesting to note that litigation and negotiating strategies often came together. More importantly, they tended to be linked to licensing efforts.<sup>111</sup> Settlement often occurred after proceedings had been initiated. For instance, disputes with the Zoological Society,<sup>112</sup> the Dublin Cinematograph Theatres,<sup>113</sup> and many others were all subject to settlements.<sup>114</sup> More importantly, the Society sought to obtain declaratory judgments in the early 1920s to force entire sectors, such as the shipping industry, to enter into comprehensive licensing schemes.<sup>115</sup> Through tactical manoeuvres that combined

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<sup>108</sup> Syrett to Woodhouse, 3 May 1921; Solicitors Files 1 (Miscellaneous); PRS Archives.

<sup>109</sup> ‘Partnership changes’, *The Law Journal*, 1904, 12; in C.F. James, *The Story of the Performing Right Society* (London: Performing Right Society, 1951) 24. For a brief reference to Syrett & Sons, see Jose Bellido, ‘Popular Music and Copyright in the Sixties’, *Journal of Law and Society*, vol. 4, issue 4, 2013, pp. 570-595.

<sup>110</sup> PRS Archives, Executive Sub-Committee meeting, 3 March 1926; 44 [‘Settlement of the action against the Dublin Cinematograph Theatres Ltd’]; see also *Boosey & Co. v Goodson Gramophone Record Co.*, [1930] 1 Ch. 448 [Boosey & Co. was represented by Syrett & Sons].

<sup>111</sup> ‘At the same time I need scarcely add that it is my desire to assist the Society, as far as possible, in arranging a settlement of claims against infringers without litigation, particularly where an infringer is willing to take up the Society’s licence’ in Syrett to Hatchman, 1 July 1935; Solicitors Files 2; PRS Archives.

<sup>112</sup> ‘The Secretary reported on the Performing Right Society which had been followed by the serving of a writ on the Zoological Society’, Minutes, 20 August 1919, p. 349; Minutes of the Council, vol. XXVI, Zoological Society Archives.

<sup>113</sup> PRS Archives, Executive Sub-Committee meeting, 3 March 1926; 44.

<sup>114</sup> ‘A letter from the Society’s solicitors stated that the legal proceedings with the Performing Right Society were in the process of settlement’, Minutes, 21 January 1920, p. 417; Minutes of the Council, vol. XXVI, Zoological Society Archives.

<sup>115</sup> PRS Archives, Executive Sub-Committee meeting, 12 February 1926; 24.

litigation and negotiation, the Society often pressed for declaration of rights as the ‘fundamental basis of the negotiations for settlement’.<sup>116</sup> Here we can see that although the litigation record of the PRS was impressive and contributed to the making of a distinctive copyright judicial history,<sup>117</sup> settlement was sometimes prioritised as a valuable outcome in many disputes.<sup>118</sup> The mere issue and service of a writ frequently brought an offer or settlement from the presumed infringer.<sup>119</sup>

Yet, it is nevertheless clear that the frequent visits to the courts made a significant impression outside the specific legal disputes in which the PRS was involved, by projecting an image of a difficult, implacable and aggressive society that would not have any hesitation in proceeding to court.<sup>120</sup> In fact, as Thomas Murphy recalls in his history of the ‘Showmen’s Guild’, the outstandingly successful litigation record of the PRS

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<sup>116</sup> PRS Archives, Executive Sub-Committee meeting, 12 February 1926; 24.

<sup>117</sup> *PRS v London Theatre of Varieties* [1922] 2 KB 433; *PRS v Bradford Corporation*, Mac.C.C. (1917-23) 309; *PRS v Cyril Theatrical Syndicate Ltd* [1924] 1 KB 1; *PRS v Mitchell & Booker (Palais de Danse) Ltd* [1924] 1 KB 762; *PRS v Bray Urban District Council* [1930] A.C. 377; *PRS v Hawthorns Hotel (Bournemouth)* [1933] Ch 855; *PRS v Hammond’s Bradford Brewery Co.* [1934] 1 Ch 121; *PRS v Camelo* [1936] 3 All ER 557; *Turner (Ernest) Electrical Instruments Ltd v Performing Rights Society Ltd* [1943] Ch 167; *PRS v Gillete Industries Limited* [1945] Ch. 167.

<sup>118</sup> C.F. James to Syrett, 10 July 1930; ‘*The Society v Howdle*’ [settlement]; Solicitors Files 1 (Miscellaneous); PRS Archives.

<sup>119</sup> Licensing Department (PRS) to Syrett, 9 February 1956; Solicitors Files 2; PRS Archives.

<sup>120</sup> In 1927, a circular from the Ludlow Division of Shropshire Conservative Association warned that ‘[the Society] has recently enormously quickened its machinery for the detection of infringements of its copyright. Numerous actions have been set going during the last few months against Conservative Associations, etc, which have unwittingly infringed its rights’; Ludlow Division of Shropshire Conservative Association: protection against actions for breach of copyright brought by the PRS; 10 October 1927, CP177/32/12/1; Shropshire Archives.



influenced the decision of the guild to renew what he thought was a disadvantageous agreement that should have been renegotiated.<sup>121</sup>

Part of this overall legal success was derived from the special care and attention that the PRS devoted to cases in which it did not go to court. The Society studied and considered the impact of important copyright cases such as *Jennings v Stephens* (1936),<sup>122</sup> but also followed and considered a number of non-copyright cases. The Society canvassed views on non-copyright cases that described what a ‘public’ house might mean in order to observe whether those definitions could have any bearing on copyright law or not.<sup>123</sup> Being aware of the semantic and legal possibilities of the expression (‘in public’), the idea behind these epistemic exercises was to know and anticipate problems on the immediate horizon.<sup>124</sup> The Society even occasionally contacted the solicitors who had participated in those cases to learn about the issues raised by the defence lawyers; over their intention to appeal or just in order to derive some knowledge of the context and the way the case had been prepared.<sup>125</sup> These exercises created a sort of ‘operational reflexivity’ that built up a significant direct expertise (that is, the preparation of legal briefs and strategies) alongside

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<sup>121</sup> Thomas Murphy, *History of the Showmen's Guild: 1888-1948* (1949) 131.

<sup>122</sup> *Jennings v Stephens* [1936] Ch 469; ‘Transcript of the judgment of the Court of Appeal (*Jennings v Stephens*)’ Solicitors Files 2; PRS Archives.

<sup>123</sup> Copy of Cutting: ‘Entertainment in a Public House’, *The Times*, 24 January 1936 and correspondence regarding the case in Solicitors Files 2; PRS Archives; similarly copy of cutting: ‘Piano in Licensed House’, *Morning Advertiser*, 13 November 1935; Solicitors Files 2; PRS Archives.

<sup>124</sup> For instance, arguments used in the address of Counsel before the Australian Royal Commission on performing rights (7 March 1933) were considered by the Society to prepare one of its most important cases: *PRS v Hawthorns Hotel (Bournemouth)* [1933] Ch 855; see letter from C.F. James to Syrett, 24 April 1933; Solicitors Files 1 (Miscellaneous); PRS Archives.

<sup>125</sup> Syrett to Hatchman, 15 July 1935; Solicitors Files 1 (Miscellaneous); PRS Archives.

the day-to-day management (such as the ways the Society developed the administration of its repertoire). Undoubtedly, the successful legal record of the PRS can also be attributed to the development of standardised documentary practices on the pathway to litigation. Some of these practices were designed to recover licence fees as quickly and efficiently as possible. Others aimed to standardise the issue of copyright writs. In 1924, Syrett set up a specimen letter to be sent before any infringement actions.<sup>126</sup> A few years later the writs in these actions were also adjusted to add the words ‘or authorising’ after the word ‘performing’ to cover the different types of liability that could be at stake.<sup>127</sup> Having standard forms to litigate tends to minimise risk. The aim was to reduce contingencies, leaving as the main question when initiating a case the issue of whom it was going to be brought against. However, even though the intention was to control any possible eventuality, difficult cases were still cropping up for the Society in situations where the person who had signed the licence was not authorised to do so.<sup>128</sup>

Sometimes it was not only the case or the settlement that became important for the Society, but how the case or the settlement was reported. Great efforts were made to publicise and monitor the way disputes were reported during the first decades of the Society’s existence. There are many examples of this conscientious attempt to set the record straight. For instance, in 1924, John Woodhouse, the PRS Controller, wrote to *The Author* to complain that the journal had failed to ‘accurately or fairly state’ the effect of the judgment given in

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<sup>126</sup> Syrett to Woodhouse, 11 December 1924, Solicitors Files 1 (Miscellaneous); PRS Archives.

<sup>127</sup> Syrett to C.F. James, 7 June 1930; Solicitors Files 1 (Miscellaneous); PRS Archives.

<sup>128</sup> Syrett to C.F. James, 16 May 1935 [‘signing of licences’]; Solicitors Files 1 (Miscellaneous); PRS Archives.

a case the Society had brought against the Bradford Corporation.<sup>129</sup> Similarly, the Society extracted paragraphs of judgments and incorporated these snippets into its leaflets in order to emphasise favourable depictions of its legitimacy. These monitoring and excerpting techniques were more than just public relations operations of the Society.<sup>130</sup> As the Society felt compelled to respond, these note-taking techniques triggered more actions. This ongoing preoccupation with its public image can also be seen in the different defamation cases initiated by the PRS. The Society sued the *Dundee Courier* in 1923 for having described its practices as tyrannical.<sup>131</sup> Although the Society was not particularly successful in this field of law, its active and engaged attitude shows a particular struggle to cope with criticism and perhaps – some might say – an oversensitivity to attacks. The awareness of the need to organise communications was also evident in the creation of a ‘public relations’ committee in 1926. Although the committee developed lobbying practices to get a ‘sympathetic understanding’ at the House of Commons,<sup>132</sup> and even reflected on the possibility of renaming the society to change the public perception,<sup>133</sup> the main strategy developed by the society was the establishment of a ‘gazette’ that included case reports and interviews of ‘music users’ praising the licensing schemes developed by PRS. More importantly, the gazette matched composers and lyricists.<sup>134</sup> A permanent section facilitated the coming together of words and music, and served to persuade literary

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<sup>129</sup> John Woodhouse, ‘Performing Right Society Ltd v Bradford Corporation’, *The Author*, January 1924, 222; referring to the case report in *The Author*, October 1923, 172-173.

<sup>130</sup> Syrett to Woodhouse, 27 September 1928 [referring to an article in *The Pianomaker* referring to the society], Solicitors Files 1 (Miscellaneous); PRS Archives.

<sup>131</sup> ‘The Performing Right Society and The Dundee Courier’, *The PLR Bulletin*, 12 February 1924, 14-18; ‘Performing Rights Society’s Action for £500 Damages’, *The Evening Telegraph and Post*, 22 November 1923; 1.

<sup>132</sup> ‘Public Relations Committee’, 16 January 1943 p. 12; PRS Archives.

<sup>133</sup> ‘Public Relations Committee’, 16 January 1943; PRS Archives.

<sup>134</sup> ‘Prize for Musical Setting of Lyric’, Committee meeting, 28 September 1926, p. 5. (PRS Archives).

authors to become lyricists. In that sense, the PRS became not only a collecting society but also a hub that facilitated and enabled joint contributions to a work to emerge.

#### 4. Musical Geographies

Collecting societies like the PRS engaged in cartographic exercises to get close to the locations where music could be performed.<sup>135</sup> In fact, some of the legal practices mentioned above revolved around attempts to acquire local and regional knowledge for the Society to expand territorially.<sup>136</sup> Likewise, significant episodes of its litigation history can be read in topographical terms.<sup>137</sup> While the idea of shifting the onus of liability to premises and venues profoundly influenced the way the Society drafted its licences and filed its claims, it also linked the quest for commercial opportunities to a territorial anxiety around the definition of ‘public’ performances. It is ironic that claims of intangible rights became connected to and based on questions relating to real property. The society had to consider property distinctions that could affect its attempt to impose liabilities upon venues, such as the difference between leases and licences. This had its pitfalls. Some owners of premises considered shifting their liability to those who hired their venues.<sup>138</sup>

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<sup>135</sup> For an illustration of the mapping exercises developed by the Spanish collecting society, see Jose Bellido, ‘Flamenco and Copyright Historiography’, in Kathy Bowrey and Michael Handler (eds) *Law and Creativity in the Age of the Entertainment Franchise* (Cambridge: Cambridge University Press, 2014) 170-194.

<sup>136</sup> References to the commencement of the society’s activities overseas are found in C.F. James, *The Story of the Performing Right Society* (London: Performing Right Society, 1951) 45-46.

<sup>137</sup> ‘Tackling the Performing Rights Problem’, *Bioscope*, 24 May 1923, 52 [Town Councils of Scotland].

<sup>138</sup> W. Godfrey Bell, Secretary of the Diocesan Church House (Hove) to the Rev. H.T. Mogridge (Rector), 19 June 1938; Correspondence and papers concerning entertainment licences from Hove Borough Council and the Performing Right Society; PAR 228/10/8/11; East Sussex Record Office Records.

Other light-footed entrepreneurs tried to sell ‘premises from one proprietor to another to avoid the consequences of legal actions’.<sup>139</sup> Although the Society’s long-term aim was that local authorities should bear the responsibility of monitoring copyright infringements,<sup>140</sup> this never materialised. As a result, the Society had to develop its own system of surveillance to transform rights into royalties. Initially it followed up theatrical and music licences issued via the Public Health Acts, Amended Act (1890).<sup>141</sup> Working along the lines and coordinates already drawn by licensing laws provided an effective starting point to begin locating places where music was likely to be performed.<sup>142</sup> As these addresses had already been affected by these regulations, the assumption was that licensed public premises would also probably need copyright licences. The most recognisable venue the Society identified in its attempt at drawing a map of claims and licences came precisely from local authorities themselves.<sup>143</sup> In the late 1910s and throughout the 1920s, local authorities became one of its main targets.<sup>144</sup> For instance, the London and the West

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<sup>139</sup> General Manager (PRS) to R.A. Syrett, 18 March 1945; Solicitors Files 1 (Miscellaneous); PRS Archives.

<sup>140</sup> R.F. Whale, ‘GEMA have it better’, *Performing Right*, May 1963, 334-336; 334.

<sup>141</sup> While the Society recognised that the music licences required by the Public Health Act had nothing to do with the licences issued by PRS, it nevertheless used the information disclosed via the Public Health Act to target specific premises; PRS to Bradford and District Licence Holders Association, 20 February 1935; Bradford and District Licence Holders Association; PRS Archives.

<sup>142</sup> Similarly, the Society found the provisions of the Licensing Act (1961) useful because they provided them ‘with classifications which could be imported to our tariffs’ in memo from the Assistant Licensing Manager to the Manager, 20 October 1961; Licensed Victuallers Central Protection Society of London; PRS Archives.

<sup>143</sup> Charles F. James notes how ‘amongst the earliest licensees were the Corporations of Bournemouth, Eastbourne, Brighton, etc’ in C.F. James, *The Story of the Performing Right Society* (London: Performing Right Society, 1951) 22.

<sup>144</sup> ‘Minutes, 13 June 1919, 89-90’, PRS Committee Minute Book 2; PRS Archives.

Sussex County Councils were granted music licences in 1920.<sup>145</sup> A few years later, other municipalities such as the Wallasey County Borough Council were also issued licences.<sup>146</sup> While the licences first covered music halls in towns, they were gradually expanded to cover music in local parks, village halls, and schools.<sup>147</sup> The focus on municipalities was a strategic move because town, rural community and borough councils were often the owners of public halls.<sup>148</sup> A similar strategy seemed to have been followed by the Society regarding religious music. The attempt to issue licences was also structured around territorial units: the local parish hall, the church and chapel hall and the Methodist circuit.<sup>149</sup> Throughout the 1930s, parish halls such as the All Saints in Plymouth,<sup>150</sup> church halls like St. Teath in North Cornwall,<sup>151</sup> and premises such as those within the Ambleside

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<sup>145</sup> *Twenty-Five Years of PRS (1914-1939): Being a Souvenir of the Silver Jubilee of the Performing Right Society* (London: Performing Right Society, 1939) 8 [London County Council]; 'Agreement between the Council and the PRS, 23 August 1920' [West Sussex County Council]; UD/LH/12/12; West Sussex Record Office.

<sup>146</sup> 'Wallasey Town Clerk; General Committee Files, 1930'; W/161/803/1 Wirral Archives Service.

<sup>147</sup> C.F. James (PRS) to F. Entwistle (Clerk, Town Hall, Farnworth, Lincs) 10 March 1931; 'Performing Rights Society, (Bands etc.)'; AF/6/83/3; Bolton Archives and Local Services Centre; Lindsey County Council to Mrs Cracroft-Amcotts, regarding a licence (PRS) on Kettlethorpe Village Hall for 1935, 9 March 1935; 2AMC/4/C/9/12; Lincolnshire Archives.

<sup>148</sup> 'Tackling the Performing Rights Problem', *Bioscope*, 24 May 1923, 52 [Scotland]; 'Bath and its Music', *The Bath Chronicle*, 19 July 1919, 20 [Bath Committee]; 'Music Licences', *Aberdeen Press and Journal*, 17 January 1923; 4 [Dundee and Aberdeen Town Councils]; 'Beyond North Bridge', *Daily Mail*, 24 May 1923, 3 [Hull City Council]; 'Copyright Claims', *The Western Times*, 17 January 1930, 10 [Braunton Council].

<sup>149</sup> 'Performing Rights Again', *Courier and Advertiser*, 2 December 1927, 6; 'Methodists Perturbed', *Aberdeen Press and Journal*, 20 July 1929; 7; see also the 'licence from the Performing Rights Society for 15 musical performances per year in the parish hall, 1933, and correspondence over reduction of licence fee and number of performances, 1939-1940' P211/J/2/1 Shropshire Archives.

<sup>150</sup> 'Licence granted by the Performing Rights Society for no more than 10 musical entertainments a year at parish hall', 5 October 1934'; 1629/36; Plymouth and West Devon Record Office.

<sup>151</sup> C.F. James (PRS) to Rev. C. W. Stenson-Stenson (St Teath Vicarage), 25 September 1931; P219/2/23; Cornwall Record Office; see also 'licence issued to St. Laurence Church Hall (London), 1933' A65/14/B5/4; Lewisham Local History and Archives Centre; 'St. Clement's Church Hall, PRS Licence, 1935';

and Windermere circuit of the Methodist Church were all covered by licences issued by the Society.<sup>152</sup> By linking liability to circuits,<sup>153</sup> the Society also grasped two major problems intrinsic to a licensing system based on premises. The first was the problem of the proliferation of territorial units. In order to avoid getting bogged down in the practicalities of controlling the network, the Society prioritised direct arrangements with collective bodies. As a result, it developed working arrangements with ‘practically all the Church bodies, including the Church of England, the Methodist Church, the Unitarian and Free Christian Churches, and the Church of Scotland’.<sup>154</sup> The second critical problem concerned ephemeral performances. Unsurprisingly, casual, itinerant and intermittent performances were difficult to trace, especially when they took place in open grounds. Since the late 1910s, the circuit pattern had provided the Society with an opportunity to acquire information about itineraries and to use this information to draft a special class of licence covering bands, travelling orchestras and itinerant showmen.

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P83/CLE/E/03/02/001; London Metropolitan Archives; ‘Clapham Congregational Church Premises, PRS licence, 1930’ ACC/2854/158; London Metropolitan Archives.

<sup>152</sup> Licence Accounts Dept. (PRS) to Rev. G. H. Bancroft Judge, Ambleside Methodist Church, 10 November 1937; WDFC/M4/82; Cumbria Record Office (Kendal); see also the Kingsway Hall (Methodist Church), PRS Licence 1918’ N/M/008/027/001; London Metropolitan Archives. For a historical reference of the emergence of circuits, see George Emery, *Methodist Church on the Prairies, 1896-1914* (Quebec: McGill-Queen’s University Press, 2011) 113-115.

<sup>153</sup> Edwin Finch, Secretary of the Conference (The Methodist Church) to Rev. William Leech, 1 October 1937 [regarding the liability of your circuit in respect of the Performing Rights Society]; AP91/31; Herefordshire Archive Services.

<sup>154</sup> C.F. James, ‘Performing Right’, *The Tablet: The International Catholic News Weekly*, 18 May 1935, 22; see also ‘Music at Church Concerts’, *Aberdeen Press and Journal*, 30 September 1926, 4; ‘A Problem for the Ministers’, *Courier and Advertiser*, 30 September 1926, 7; ‘Ministers and the PRS’, *Courier and Advertiser*, 3 November 1926, 8; ‘Music at Church Concerts’, *Aberdeen Press and Journal*, 30 September 1926, 4; ‘A Problem for the Ministers’, *Courier and Advertiser*, 30 September 1926, 7; ‘Ministers and the PRS’, *Courier and Advertiser*, 3 November 1926, 8.

Although the Society incidentally filed claims against some itinerant performers,<sup>155</sup> because – according to its general manager – these showmen did ‘not own the fairground and merely took up their pitch on them’,<sup>156</sup> a timely compromise was again reached in 1919 with an agreement with bodies such as the ‘Showmen’s Guild’.<sup>157</sup> The arrangement with collective groups, trade unions and church bodies was important because it saved the Society from the need to monitor specific travellers. While these collective bodies were delegated the task of collecting revenues, the effect of the specific type of licence covering ephemeral performances was that it somehow separated the fixed place of performance from the conditions of licensing. As the licence had a certain degree of abstraction that went with its potential to detach performances from premises, it is no surprise that the wording of this form of licence was widened in scope decades later in an attempt to cover ‘public parades’.<sup>158</sup>

In addition to music halls and other commercial establishments, clubs and hotels also occupied a distinctive and peculiar place in the collective imagination.<sup>159</sup> For the Society, these premises provided comfortable parlours and lobbies that could be gathering places where a performance ‘in public’ could take place. In the early 1930s, the Society had

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<sup>155</sup> ‘Showmen to Pay’ *Citizen*, 4 June 1932, 8 [Copyright in Fairgrounds].

<sup>156</sup> C.F. James to Syrett, 9 July 1930 [*The Society v Shuttleworth* (itinerant showman)] Solicitors Files 1 (Miscellaneous); PRS Archives.

<sup>157</sup> C.F. James, *The Story of the Performing Right Society* (London: Performing Right Society, 1951) 29.

<sup>158</sup> General Manager (PRS) to Syrett, 4 January 1956; Solicitors Files 3; PRS Archives.

<sup>159</sup> ‘Composers’ Fees’, *The Daily Telegraph*, 11 July 1914, 11-12; ‘Music in Clubs’ General Committee Minutes, 23 September 1925; 180; PRS Archives; ‘Performances in Members Clubs’, *Performing Right*, September 1959, 174; Syrett to Walter (General Manager, PRS) ‘Radio in Hotel Bedrooms’, 19 March 1954; Solicitors’ Files 3; PRS Archives.



requested counsel's opinion to consider whether performances in lounges were indeed public performances under the Copyright Act (1911). This question was particularly timely after the Court of Appeal had provided some insights on the issue in relation to a musical performance held in the fashionable 'Embassy Club'.<sup>160</sup> The barrister consulted, Kew Edwin Shelley (1894-1964), observed that there was not 'any hard and fast line' that could be drawn and that the definition was 'a question of fact in each case'.<sup>161</sup> Despite, or because of, this difficulty, he recommended taking the action against the Hawthorns Hotel in Bournemouth based on various dicta from the 'Embassy Club' case.<sup>162</sup> Interestingly, he suggested that cases against hotels constituted a much stronger claim in favour of the Society than a case against clubs. Clubs were – according to him – *prima facie* private while hotels were public since 'any member of the public can take admission by taking a bedroom'.<sup>163</sup> Shelley was surely conditioned by a very British institution, a class of clubs called 'gentleman's clubs'. And the distinction he drew between hotels and clubs was spot on because it was exactly one of the examples used by the judges to rule for the Society in proceedings against the hotel. It was surely because of the concerns raised by the barrister and the references made by the judges that the Society was reluctant to approach this class of club. There were some features that made these gentlemen's clubs difficult. It was not only that they were residential or semi-residential; it was that these members' clubs were described by everybody as 'private'.<sup>164</sup> Although the formation of the Association of

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<sup>160</sup> *Harms Incorporated v Martans Club Ltd* [1926] All E.R. 213.

<sup>161</sup> Kew Edwin Shelley, Opinion, 30 November 1932, 1; Solicitors Files 2; PRS Archives.

<sup>162</sup> *PRS v Hawthorns Hotel (Bournemouth)* [1933] Ch 855.

<sup>163</sup> Kew Edwin Shelley, Opinion, 30 November 1932, 2; Solicitors Files 2; PRS Archives.

<sup>164</sup> 'Forming and joining clubs may seem something peculiarly English to do [...]. Clubs were private members institutions "private members" institutions so only fully paid up members and signed-in guests could use them', in

London Clubs in the 1950s paved the way for negotiations to take place, the attempts of the Society to extend its licences to all clubs failed and only the Savage club took a licence. Nevertheless, this episode shows again the dogged perseverance of the Society when considering the boundaries between private and public spheres.

## 5. Data Infrastructures

Perhaps the most interesting achievement of the Society lay neither in building alliances nor in facilitating the drawing of a line between private and public spheres. Rather, the most remarkable accomplishment was the development of sustainable data infrastructures connecting data to music with timely efficiency. The society constituted a ‘data-driven’ system based on the information exchanges between itself, its members and its licensees. This system fuelled the transformation of rights into royalties, which enabled the shift from collection to distribution. The data system was initially characterised by a strong focus on routines, operating procedures and paperwork. In that sense, the Society provides a prime example of what some scholars have recently defined as the ‘ensuing bureaucratization of copyright’ that characterised the twentieth century.<sup>165</sup> As has been argued, copyright would

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Ruth Cherrington, *Not Just Beer and Bingo! A Social History of Working Men's Clubs* (Bloomington: AuthorHouse, 2012) at xv.

<sup>165</sup> Brad Sherman and Leanne Wiseman, ‘Copyright: When Old Technologies were New’, in Brad Sherman and Leanne Wiseman (eds) *Copyright and the Challenge of the New* (Kluwer Law, 2012) 9; see also Thomas Streeter, ‘Broadcast Copyright and the Bureaucratization of Property’, in Peter Jaszi and Martha Woodmansee (eds) *The Construction of Authorship: Textual Appropriation in Law and Literature*, Duke University Press, 1994, 303-326.

be then conceived as the ‘legal underpinning of an institutional bureaucracy that attempts to simulate a market through statistical mechanisms’.<sup>166</sup>

Different forms of engagement and reporting were at the core of the collective enterprise. For instance, new members were initially required to report and notify their musical works via their catalogues and ‘journey sheets’. It was important to link the information regarding the selling of music sheets in order to anticipate what was likely to be sung or performed and by whom it was likely to be sung or performed. Members were also constantly reminded to report their new publications in order to keep the ‘records up to date’.<sup>167</sup> However, the most important initial source of information came neither from its inspectors nor from its licensees but from those who had direct access to that information, the Amalgamated Musicians’ Union. Although the boycott organised by the union confined its discourse to the effect of modes of tariff calculation on musical labour, it really elicited a heated controversy with more subtle underpinnings. In the early days of the PRS, the president of the Amalgamated Musicians’ Union, J.B. Williams, served as a key informant for the Society to carry out what Annette Davison has recently defined as its *raison d’être*: the collection and analysis of the information it needed to distribute its revenues.<sup>168</sup> When Williams was dismissed in 1917, he felt aggrieved – and not just because he was no longer working for the PRS but because the Controller of the PRS published an article revealing

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<sup>166</sup> Lionel Bently and Brad Sherman, *Intellectual Property Law*, Oxford University Press, 2014, 308.

<sup>167</sup> PRS Archives, Boosey & Co, letter to Boosey & Co, 14 April 1926.

<sup>168</sup> Annette Davison, ‘Workers’ Rights and Performing Rights: Cinema Music and Musicians Prior to Synchronized Sound’ in Brown, J. and Davison, A. (eds) *The Sounds of the Silents in Britain* (Oxford: Oxford University Press, 2012) 243-262.

this previous engagement.<sup>169</sup> Williams brought a libel case against him that was also settled. It is not only that this dispute should be read in the context of the boycott mentioned above, but that the disclosure of this engagement also highlighted the crucial importance of data infrastructures upon which the PRS was constituted.

The significant emphasis on updating information was not only an interest in data curation but also an attempt to maximise revenue streams on an ongoing basis. The regular circulation of information and the reporting requirements also, and fundamentally, affected licensees, who were constantly obliged to report what they performed. For instance, licensees were told to supply lists of the entr'acte music in the orchestra,<sup>170</sup> and send the programmes of the music performed on their premises.<sup>171</sup> As such, the obligation to send information was a basic condition contained in the licences and the PRS always highlighted the importance of that obligation. Information devices and magazines such as the *Radio Times* were repeatedly checked against entertainment programmes, and cue sheets supplied by licensees.<sup>172</sup> By carefully checking, matching and verifying data of performances retrospectively, the transition from rights to royalties was secured and the unpredictable contingencies of performing life were domesticated.<sup>173</sup> In that sense, the

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<sup>169</sup> The precise litigation was centred around an article published Daily Telegraph on the 10th January 1919, in which Woodhouse, from the PRS stated: As to Mr Williams, I leave his tactics to the consideration of the public in general and the members of his own Union in particular who may or may not be aware that at one time he was on the salary list of the PRS, when he had no fault to find with its methods

<sup>170</sup> 'Performing Right Society', *The Theatrical Managers Association Journal*, February 1927, 10.

<sup>171</sup> 'The Programme Nuisance', *The Daily Telegraph*, 18 July 1914, 9.

<sup>172</sup> PRS Archives, Boosey & Co, letter from Leslie Boosey to J. Woodhouse, 19 April 1926 [concerning the return of programmes from the Concert Artists' Association].

<sup>173</sup> PRS Archives, Boosey & Co, letter from Leslie Boosey to PRS, 30 November 1929.

Society routines were recursively embracing adjustments, showing that collective management depended on individual reporting.

In the early 1920s, the society installed a Kardex system as the main tool to handle and tabulate information.<sup>174</sup> Although the PRS was a late-comer in the European landscape of collecting societies, it was however the first in developing an automated system to process data. This particular relationship with machines or technology was crucial for the development and success of the Society. That the system was technologically feasible and viable was part and parcel of the quest for legitimacy, as other attempts to establish copyright collecting societies have later demonstrated.<sup>175</sup> A decade later, a journalist from the *Daily Herald* fully captured this dynamic process and its significance when he visited the PRS. In observing what lay behind those doors, and discussing how the society actually ‘managed’ the data collected, his report paid attention to the moment in which thirteen electric machines hummed into action to calculate royalties, how ‘composers [were] being punched all over the place, reduced to decimal fractions and mangled between racing rollers’ and how popular songs [were] becoming ‘just a hole in card’. The transformative character [and agency] of the machines to shift from collection to distribution was also evidenced when ‘a machine gave one song-writer £100 as his fourth-art share in the broadcast rights of a popular hit’.<sup>176</sup>

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<sup>174</sup> *The PR Gazette*, vol. 1, No. 2, October 1922, 47.

<sup>175</sup> In the context of the Public Lending Right, see Raymond Astbury, ‘The Situation in the United Kingdom’, *Library Trends*, 29(4) Spring 1981: 661-685.

<sup>176</sup>

## Conclusion

William Boosey's insight has been praised by some scholars for having anticipated the link between market changes and legal developments.<sup>177</sup> In fact, Boosey himself was convinced that he had foreseen what was coming, that a composer's performing right would eventually become more valuable than his publishing rights.<sup>178</sup> However, the early decades of the PRS are a clear example of the uncertain and collective nature of creative entrepreneurship. They demonstrate the importance of building controversial alliances to create a society around music copyright. While it might be argued that the rise of collecting societies was a consequence of the need to save transaction costs incurred in the management of performing rights,<sup>179</sup> the argument here is that the significance of collective administration went beyond its definition as a 'watchful' and efficient agency.<sup>180</sup> It was not merely a more efficient way to manage copyright. Rather, it shaped and reshaped the different ways in which the music industry evolved in the twentieth

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<sup>177</sup> Cyril Ehrlich, *Harmonious Alliance. A History of the Performing Right Society* (Oxford University Press, 1989) 13; Alan Peacock and Ronald Weir, *The Composer in the Market Place* (Faber Music, 1975) 44;.

<sup>178</sup> William Boosey, *Fifty Years of Music* (London, Ernest Benn, 1931) 175.

<sup>179</sup> 'Music Industry', in Joel Mokyr (ed) *The Oxford Encyclopaedia of Economic History* (OUP 2003) 23; Ruth Towse, 'Copyright and Economics', in Simon Frith and Lee Marshall (eds) *Music and Copyright* (Edinburgh University Press, 2004) 64.

<sup>180</sup> 'Francis Newton on the Jazz Business'. *The Sunday Times*, 10 June 1962; 4.

century.<sup>181</sup> In fact, the PRS conflated the social and technical aspects of copyright emerging at that time. It had a profound impact, signalling a qualitative mutation in the conceptual understanding of copyright. It embraced and tried to respond to what several scholars have recently defined as the ‘decentralisation of copying’.<sup>182</sup> In that sense, the PRS could be conceived as a collective that emerged as a response to technological changes. However, it was also a triggering mechanism that altered the identity of the music industry itself. Turning our attention to the ambivalent attitudes and the technological aspects embedded in collective management elucidates this point. We argue that studying the intricate contingencies and changing attitudes from which collective licensing emerged is necessary for an appreciation of how the music industry has been historically constituted. More precisely, the consideration of how the PRS mobilised and enrolled a great number of composers and competing publishers who ‘either continued to believe in direct licensing or clung to the tenet that purchase and hire fees was the main copyright model’ is key for perceiving the conceptual shifts initiated in music copyright by collective management.

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<sup>181</sup> For some references to the role of collecting societies beyond administration, see Lionel Bently, *Between a Rock and a Hard Place: The Problems facing Freelance Creators in the UK Media Market-Place* (London: Institute of Employment Rights, 2002) 52 [‘Collecting societies do not simply operate as collectors and distributors of monies. In some cases they can constitute important mechanisms for shielding creators from the market power of exploiters’].

<sup>182</sup> Brad Sherman and Leanne Wiseman, ‘Copyright: When Old Technologies were New’, in Brad Sherman and Leanne Wiseman (eds) *Copyright and the Challenge of the New* (Kluwer Law, 2012) 9.